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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,914	01/18/2001	Galen Mark Gareis	6500-1583.2	8471
7590 05/01/2007 ROBERT F. I. CONTE LEE, MANN, SMITH, MCWILLIAMS, SWEENEY & OHLSON P.O. BOX 2786 CHICAGO, IL 60690-2786			EXAMINER MAYO III, WILLIAM H	
			ART UNIT 2831	PAPER NUMBER
			MAIL DATE 05/01/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/765,914

Applicant(s)

GAREIS ET AL.

Examiner

William H. Mayo III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14, 16, 17 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14, 16-17, and 27-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 14, 16-17, and 27-30 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 5,789,711 in view of Arroyo et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the claimed subject matter being claimed in the current application is disclosed in Patent No. 5,789,711 and therefore the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows with the current claims being listed first followed with annotations of Patent No. 5,789,711.

With respect to claim 14

A data cable (high performance data cable, Col 6, line 19) having a plurality of twisted pair conductors (a twisted pair of insulated conductors in each conductor compartment, Col 6, lines 44-45), a cable covering (foil shield (Col 6, lines 41-42), and an interior support (an interior support, Col 6, line 20) comprising a longitudinally extending central portion forming a portion of the support (central region extending outward from support, Col 6, lines 21-23); a plurality of projections extending from said central portion (a plurality of prongs extending outward from the central region, Col 6, lines 25-26), wherein each projection of said plurality of projections being adjacent two other projections of said plurality of projections wherein the plurality of projections forming a plurality of adjacent projections (an arrangement of prongs, each prong is adjacent with at least two other of said prongs forming of adjacent prongs (Col 6, lines 28-31); an open space defined by each of the plurality of adjacent projections (a groove defined by each of the pairs of adjacent prongs, Col 6, lines 32-34), a cable covering contacting each projection (each conductor compartment defined by a pair of adjacent prongs and a foil shield (Col 6, lines 40-44, i.e. the shield must contact the prong as it covers the cable compartment), only one twisted pair conductor from the

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plurality of twisted pair conductors disposed each open space (a twisted pair of insulated conductors in each of the conductor compartments (Col 6, lines 44-45) wherein the cable covering includes an overall shield (Col 6, lines 40-44, i.e. the shield must contact the prong as it covers the cable compartment).

With respect to claim 16

The cable of claim 14, wherein each of the said projections is a projection selected from a group consisting of a prong, spline, and an arm (prongs, Col 6, lines 24).

With respect to claim 17

The cable of claim 14, wherein said opening space is an open space selected from the group of a channel, groove, duct, and a passage (groove, Col 6, lines 32).

With respect to claim 27

A data cable (high performance data cable, Col 6, line 19) having a plurality of twisted pair conductors (a twisted pair of insulated conductors in each conductor compartment, Col 6, lines 44-45), a cable covering (foil shield (Col 6, lines 41-42), and an interior support (an interior support, Col 6, line 20) comprising a longitudinally extending central portion forming a portion of the support (central region extending outward from support, Col 6, lines 21-23); a plurality of projections extending from said central portion (a plurality of prongs extending outward from the central region, Col 6, lines 25-26), wherein each projection of said plurality of plurality of projections being

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adjacent two other projections of said plurality of projections wherein the plurality of projections forming a plurality of adjacent projections (an arrangement of prongs, each prong is adjacent with at least two other of said prongs forming of adjacent prongs (Col 6, lines 28-31); an open space defined by each of the plurality of adjacent projections (a groove defined by each of the pairs of adjacent prongs, Col 6, lines 32-34), a cable covering contacting each projection (each conductor compartment defined by a pair of adjacent prongs and a foil shield (Col 6, lines 40-44, i.e. the shield must contact the prong as it covers the cable compartment), only one twisted pair conductor from the plurality of twisted pair conductors disposed each open space (a twisted pair of insulated conductors in each of the conductor compartments (Col 6, lines 44-45).

With respect to claim 28

The cable of claim 27, wherein each of the said projections is a projection selected from a group consisting of a prong, spline, and an arm (prongs, Col 6, lines 24).

With respect to claim 29

The cable of claim 27, wherein said opening space is an open space selected from the group of a channel, groove, duct, and a passage (groove, Col 6, lines 32).

With respect to claim 30

A data cable (high performance data cable, Col 6, line 19) having a plurality of twisted pair conductors (a twisted pair of insulated conductors in each conductor

compartment, Col 6, lines 44-45), a cable covering (foil shield (Col 6, lines 41-42), and an interior support (an interior support, Col 6, line 20) comprising a longitudinally extending central portion forming a portion of the support (central region extending outward from support, Col 6, lines 21-23); a plurality of projections extending from said central portion (a plurality of prongs extending outward from the central region, Col 6, lines 25-26), wherein each projection of said plurality of projections being adjacent two other projections of said plurality of projections wherein the plurality of projections forming a plurality of adjacent projections (an arrangement of prongs, each prong is adjacent with at least two other of said prongs forming adjacent prongs (Col 6, lines 28-31); an open space defined by each of the plurality of adjacent projections (a groove defined by each of the pairs of adjacent prongs, Col 6, lines 32-34), only one twisted pair conductor from the plurality of twisted pair conductors disposed each open space (a twisted pair of insulated conductors in each of the conductor compartments (Col 6, lines 44-45).

Claims 14, 27, and 30 disclose all of the claimed invention except the interior support being unshielded.

It would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to comprise the interior support being unshielded as taught by the Gareis reference because Gareis teaches that such a configuration is well known in the art that and commonly utilized to provide the interior twisted pairs from crosstalk (Col 2, lines 19-25), as opposed to individually shielding the conductors (Col 1, lines 33-37), and typically when the overall cable is provided with a overall shield such a shield is

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sufficient to protect the interior components of the cable from external magnetic interference, as shown by the Gareis reference (see drawings).

Response to Arguments

3. Applicant's arguments filed February 13, 2007 have been fully considered but they are not persuasive. Specifically, the applicant argues the following:

- A) The claims in the present invention doesn't require the prongs to have a tip to crevice ratio of about 2.1-2.8 and therefore the double patenting rejection is improper.
- B) The allowance of claims 14, 16-17, and 27-30 doesn't extend the date of the patent because the current case is a continuation in part application and therefore the double patenting rejection is improper.

With respect to arguments A & B, the examiner respectfully traverses. The statute for determining double patenting, is not whether the conflicting claims of the application are identical, but rather if at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969). In this case, the examined application claims in the

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instant application are fully disclosed in the claims of the patent. In such a case, the double patenting statute is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. The fact that the applicant has chosen not to claim the ratio of the prong in the present invention, doesn't exclude the fact that all of the rest of the claims are disclosed in the claims of the patent list above. A common practice of double patenting is to hypothetically state "What if this reference was not commonly owned by the assignee, and qualified in the statute of 35 USC 102 (B) as prior art. Would the claims of the present application be rejection utilizing the commonly owned patent?" In this case, they would be rejected under 35 USC 102(b) and 35 USC 103(a) based on the claims of the patent stated above." However, since the patent 5,789,711 doesn't qualify under the statutes of 35 USC 102 or 35 USC 103, a double patenting rejection is mandatory because an applicant is entitled to one patent for one invention. Specifically, 35 USC 101 states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Therefore, the examiner respectfully submits that the double patenting rejection as cited is proper and just.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Communication

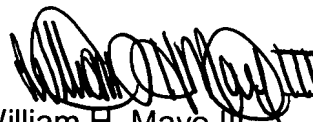
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Mayo III whose telephone number is (571)-272-1978. The examiner can normally be reached on M-F 8:30am-6:00 pm (alternate Fridays off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on (571) 272-2800 ext 31. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William H. Mayo III
Primary Examiner
Art Unit 2831

WHM III
April 11, 2007